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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 21st May 2012

No. 3950—li/1(B)-10/2003(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th November 2011 in I. D. Case No. 21 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Mendhasala Service Co-operative Society Ltd., Mendhasala, Khurda and their Workmen (1) Shri Brajabandhu Mishra, (2) Shri Biswanath Sahoo, (3) Shri Laxmikanta Mishra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 21 OF 2003

The 30th November 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of
M/s Mendhasala Service Co-operative
Society Ltd., Mendhasala, Khurda.

.. First Party—Management

And

Their Workmen (1) Shri Brajabandhu
Mishra, (2) Shri Biswanath Sahoo,
(3) Shri Laxmikanta Mishra.

.. Second Party—Workmen

Appearances :

Shri S. K. Mangaraj

.. For First Party— Management

Shri B. Mishra
Shri B. N. Sahoo
Shri L. Mishra

.. For Second Party— Workmen themselves

AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court vide Order No. 3784—li/1 (B)-10/2003-LE., dated the 9th April 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Mendhasala Service Co-operative Society Ltd., Mendhasala, Khurda in terminating the services of Shri Brajabandhu Mishra, Conductor, (2) Shri Laxmikanta Mishra, Conductor, (3) Shri Biswanath Sahoo, Conductor by way of refusal of employment with effect from the 11th August 2001 is legal or justified ? If not, what relief they are entitled to ?”

3. The case of the workmen, in brief, as set out in their common statement of claim is that they were working under the management as bus Conductor with effect from the 1st December 1996 on a monthly salary of Rs. 2,100 continuously without any break. All on a sudden, the management terminated their services by way of refusal of employment with effect from the 11th August 2001 without any rhyme and reason. According to the workmen, they had completed 240 days of service in a twelve calendar months preceding to the date of their termination. While terminating their services, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act and has also not followed the principles of “last come first go” while terminating their services. So the management has violated the provisions of Sections 25-F, 25-G and 25-H of Industrial Disputes Act. In these backgrounds the workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management, the workmen were engaged on daily wage basis. As the management sustained heavy loss, it is decided that the buses were given to the outsiders on contract basis and the workmen were taken the same on contract basis but did not pay the amount as per the contract. So in these averments, the management has prayed for dismissal of the present case.

5. In view of the above pleadings of the parties, the following issues are settled :—

ISSUES

“(i) Whether the action of the management of M/s Mendhasal Service Co-operative Society, Mendhasala, Khurda in terminating the services of Shri Brajabandhu Mishra, Conductor, (2) Shri Laxmikanta Mishra, Conductor, (3) Shri Biswanath Sahoo, Conductor by way of refusal of employment with effect from the 11th August 2001 is legal or justified ?

(ii) If not, what relief they are entitled to ?”

6. In order to substantiate their plea, each of the workmen have examined themselves as W.W. 1, W.W. 2 and W.W. 3 respectively and proved the copy of authorisation certificates issued

by the management under the cover of Exts. 1, 1/a and 1/b respectively. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the issues are taken up together.

All the workmen have fully corroborated the facts stated in their statement of claim. Since the management has not been cross-examined the workman witnesses and also did not adduce any evidence. The evidence adduced by the workmen both oral and documentary have remained unchallenged.

8. It is stated by the workmen that no notice was served on them before they were terminated. Also notice pay and retrenchment compensation was not paid to them before refusal of employment by the management. Thus the management has contravened the provisions of Section 25-F of the Industrial Disputes Act.

9. So on careful consideration of all the materials available in the case record as discussed above and in view of unchallenged testimony of the workmen, I came to the finding that the action of the management in terminating the services of the workmen by way of refusal of employment with effect from the 11th August 2001 is neither legal nor justified. So the workmen are entitled to be reinstated in service. However, as the workmen had not worked for the management during the period in question, they are entitled to get 50% back wages. Hence, both the issues are answered accordingly.

10. Hence it is ordered :

That the action of the management of M/s Mendhasal Service Co-operative Society, Mendhasal, Khurda in terminating the services of Shri Brajabandhu Mishra, Conductor, (2) Shri Laxmikanta Mishra, Conductor, (3) Shri Biswanath Sahoo, Conductor by way of refusal of employment with effect from the 11th August 2001 is illegal and unjustified. The above named workmen are entitled to be reinstated in service with 50% back wages. The management is directed to implement this Award within a period of two months from the date of its publication failing which, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
30-11-2011
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
30-11-2011
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

M. R. CHOUDHURY
Under-Secretary to Government